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[Porter v. Brown & Root, Inc.](#), 91-ERA-4 (Sec'y Mar. 17, 1995)

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DATE: March 17, 1995  
CASE NO. 91-ERA-4

IN THE MATTER OF

LINDA PORTER,

COMPLAINANT,

v.

BROWN & ROOT, INC.,

and

TEXAS UTILITIES,

RESPONDENTS.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT  
AND DISMISSING CASE

This case arises under the employee protection provisions of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988) and the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2622.

On February 25, 1994, I disapproved of a settlement agreement that required the terms to be kept confidential. I found such a requirement to be inconsistent with my obligations under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988). Respondents appealed to the U.S. Court of Appeals for the Fifth Circuit and the court dismissed the petition for review. *Brown & Root, Inc. and TU Electric v. U.S. Dep't of Labor*, No 94-40337 (5th Cir. Jan. 11, 1995) (unpublished).

The parties have now submitted a modified settlement agreement and release which deletes the offending confidentiality provisions. The parties have requested notification under

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29 C.F.R. § 70.26 of the FOIA regulations regarding any requests for the inspection or copying of the settlement agreement and release.

A review of the agreement reveals that it encompasses matter

arising under laws other than the ERA and TSCA. See Settlement Agreement, Section 3. As stated in *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1, Sec. Order Nov. 2, 1987, slip op. at 2:

[The Secretary's] authority over settlement agreements is limited to such statutes as are within [the Secretary's] jurisdiction and is defined by the applicable statute. See *Aurich v. Consolidated Edison Company of New York, Inc.*, Case No. [86-]CAA-2, Secretary's Order Approving Settlement, issued July 29, 1987; *Chase v. Buncombe County, N.C.*, Case No. 85-SWD-4, Secretary's Order on Remand, issued November 3, 1986.

I have therefore, limited my review of the agreement to determining whether the terms thereof are a fair, adequate and reasonable settlement of Complainant's allegation that Respondents violated the ERA or TSCA.

Finally, with respect to Respondents' request for notification under 29 C.F.R. § 70.26 of any requests under the FOIA for inspection or copying of the settlement agreement and release, the Office of Administrative Law Judges, as custodian of the documents, is directed to place a notice prominently displayed in the record of this case referring to Respondent's request and directing that the procedures in 29 C.F.R. § 70.26 be followed if a FOIA request is received for the settlement and release in this case.

Upon review, I find the terms of the Settlement Agreement and Release within the scope of my authority and as interpreted herein, to be fair, adequate and reasonable and I approve them. Accordingly, the complaint in this case is DISMISSED WITH PREJUDICE.

SO ORDERED.

ROBERT B. REICH  
Secretary of Labor

Washington, D.C.